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CPLR 602: No Consolidation or Joint Trial of Actions for Personal Injuries and Declaratory Judgment of Non-Coverage

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namely, whether the injury has occurred in New York. In *Spectacular Promotions, Inc. v. Radio Station WING*,[53] plaintiff was a national publicity firm with offices in New York. It alleged unfair competition by the defendant, an Ohio resident not doing business in New York, for altering one of plaintiff's announcements and broadcasting it in Ohio for a competitor's benefit.

In ascertaining the most reasonable and fair locus of injury for jurisdictional purposes, the court emphasized the foreseeability test of CPLR 302(a)(3) and posed three possible forums for trial of the unfair competition action: the plaintiff's principal place of business, any place the plaintiff does business, and the place where the business was lost. The first possibility was rejected because of the absence of a predictable relationship between the principal place of business and defendant's tortious act.[54] As to the second possibility, the court observed that a large national corporation should not be entitled to sue in any state in which it does business. Granting such latitude to plaintiff, stressed the court, would obviously be unfair to the defendant.

The court adopted the businessman's concept of injury, and concluded that the place where one loses customers is the most foreseeable forum for suit in an unfair competition action. At this situs there would be a reasonable relation between the defendant and the nation-wide plaintiff corporation. It would be here that all the critical events took place and here there would be minimum contacts by the defendant to satisfy the *Hanson v. Denckla* requirements.[55] The court, in conclusion, analogized plaintiff to "a man with his trunk and head in one state and his limbs and fingers spread over many others. If one finger is bruised, the whole body—including each of the fingers—is weakened. Most would agree, however, that the injury is localized in one finger." [56]

ARTICLE 6 — JOINDER OF CLAIMS, CONSOLIDATION AND SEVERANCE

CPLR 602: No consolidation or joint trial of actions for personal injuries and declaratory judgment of non-coverage.

CPLR 602(a) gives the court discretion to grant a motion for joint trial of any or all matters in issue where the pending actions involve a common question of law or fact. This provision is primarily designed to avoid the danger of divergent decisions on a similar issue.

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[53] 272 F. Supp. 734 (E.D.N.Y. 1967).
[54] *Id.* at 737.
[55] 357 U.S. 235 (1958).
[56] Spectacular Promotions, Inc., v. Radio Station WING, 272 F. Supp. 734, 737 (E.D.N.Y. 1967).

In *Bogucki v. Mednis*,[57] defendant-insured moved under this section to have an action by his insurer for a declaration of non-coverage on his insurance policy joined with two personal injury actions pending against him. The Supreme Court, Monroe County, denied the motion, holding that the facts of the accident had nothing in common with the question of timely notice to the insurer.

The present tendency is to permit consolidation whenever possible, irrespective of the diversity of the issues.[58] For example, consolidation is allowed where both actions arose from the same accident, involve substantially the same questions of law or fact except as to damages, and the same witnesses would testify in both actions.[59] Despite the desirability of avoiding multiplicity of suits and mitigating costs and expenses, however, consolidation will not be allowed where there is no substantially similar question of law or fact. As in *Bogucki*, consolidation was denied in *Gibbons v. Groat*,[60] where the only common factor was the similarity of parties.

ARTICLE 31 — DISCLOSURE

CPLR 3101(a): Disclosure of names and addresses of witnesses present at the accident not required for pre-trial hearing.

In *Alongis v. City of New York*,[61] the Supreme Court, Kings County, held that a party is not required to furnish the names and addresses of witnesses to the City in a hearing that is preliminary to the commencement of an action. Although the decision was based on an interpretation of Section 93d-1.0 of the Administrative Code of the City of New York and Section 50-h of the General Municipal Law, an analogy to the CPLR may be drawn.

CPLR 3101(a) allows for the disclosure of names and addresses of witnesses only where the identity of such witnesses is "material and necessary in the prosecution or defense of an action. . . ." Even if it is material and necessary, a further limitation exists. CPLR 3101(c) and (d) respectively make non-attainable the work product of an attorney and, qualifiedly, any material prepared for litigation unless that material can no longer be duplicated and withholding it will result in injustice or undue

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[57] 54 Misc. 2d 342, 282 N.Y.S.2d 814 (Sup. Ct. Monroe County 1967).
[58] Dasheff v. Bath, 25 Misc. 2d 13, 15, 206 N.Y.S.2d 733, 736 (Sup. Ct. N.Y. County 1959) (two negligence actions consolidated).
[59] Berger v. Long Island R.R., 24 App. Div. 2d 509, 261 N.Y.S.2d 575 (2d Dep't 1965).
[60] 22 App. Div. 2d 996, 254 N.Y.S.2d 843 (3d Dep't 1964) (mem.).
[61] 54 Misc. 2d 771, 283 N.Y.S.2d 301 (Sup. Ct. Kings County 1967).